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No. 06-273

In the Supreme Court of the United States

MIKE COX, in his official capacity as Attorney General of the State of Michigan; ROBERT KLEINE, in his official capacity as Treasurer of the State of Michigan

Petitioners.

v

DAIMLERCHRYSLER CORPORATION; DAIMLERCHRYSLER – UAW PENSION AGREEMENT

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. 29 USC 1056(d)(1) of the Employee Retirement Security Act (ERISA) preempts State laws that result in an alienation of protected pension benefits. Alienation occurs when a right or interest transfers to a third-party, while it is still under plan control, through an arrangement that is enforceable against the pension plan. Where a State court reimbursement order is in place against an inmate's prison account, and Michigan law prohibits inmate ownership of a non-prison account, is there an alienation of plan benefits when the warden notifies the Plan to send the inmate's pension benefits to the prison for deposit into his prison account rather than to an inmate-designated non-prison account?

2. 29 USC 1144(a) preempts State laws that "relate to" or impose a burden on an ERISA-protected plan when the laws have more than a tenuous, remote, or peripheral connection with a core plan activity. Do Michigan laws that restrict inmates to only a prison bank account and prohibit any non-prison accounts, impose a burden on a private pension plan when the plan is required to send an inmate-pensioner's payments to the prison for deposit into the inmate's account?

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A. The decision below has decided an important federal question in a way that conflicts with a Michigan Supreme Court decision on the same important matter. It judicially engrafts a new requirement onto the U.S. Treasury definition of "alienation" by finding that a "transfer" of

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D. The Court of Appeals erred by holding SCFRA orders and notices are preempted by ERISA's anti-alienation provision and not enforceable against the Plan. 21

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OPINIONS AND ORDERS BELOW

The May 23, 2006, opinion of the United States Court of Appeals for the Sixth Circuit is published and is reproduced in the Appendix at 1a.[1]

The May 18, 2005 unpublished Amended Declaratory Judgment of the United States District Court, Eastern District of Michigan, Southern Division, is unpublished and is reproduced in the Appendix at 17a.[2]

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Sixth Circuit entered its Judgment on May 23, 2006. This Court has jurisdiction pursuant to 28 USC 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

29 USC 1056(d)(1) provides:

> Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

29 USC 1144(a) provides:

> the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . .

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[1] *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir, 2006).

[2] *DaimlerChrysler v Cox*, unpublished opinion/order of the United States District Court, dated May 18, 2005 (Docket No. 04-73291).

26 CFR 1.401(a)-13(c)(ii) provides:

> (c) Definition of assignment and alienation (1) In general. For purposes of this section, the terms "assignment" and "alienation" include -
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> (ii) Any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of the plan benefit payment which is, or may become, payable to the participant or beneficiary.

The entire Michigan State Correctional Facility Reimbursement Act[3] is reproduced in the Appendix at 25a. Excerpts of specific sections challenged are printed below:

MCL 800.403(3) provides:

> Not more than 90% of the value of the assets of the prisoner may be used for purposes of securing costs and reimbursement under this act.

MCL 800.404 provides (in pertinent part):

> (1) The circuit court shall have exclusive jurisdiction over all proceedings under this act. The attorney general may file a complaint in the circuit court for the county from which a prisoner was sentenced, stating that the person is or has been a prisoner in a state correctional facility, that there is good cause to believe that the prisoner has assets, and praying that the assets be used to reimburse the state for the expenses incurred or to

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[3] MCL 800.401, *et seq.*

> be incurred, or both, by the state for the costs of care of the person as a prisoner.
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> * * *
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> (5) At the hearing on the complaint and order and before entering any order on behalf of the state against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support.
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> * * *
>
> (8) The state may recover the expenses incurred or to be incurred, or both, by the state for the cost of care of the prisoner during the entire period or periods the person is a prisoner in a state correctional facility. The state may commence proceedings under this act until the prisoner has been finally discharged on the sentence and is no longer under the jurisdiction of the department.

Michigan Department of Corrections Directive PD 04.02.105 provides (in pertinent part)[4]:

> B. Each prisoner in a CFA institution shall have an institutional account. Funds credited to the account shall be available to the prisoner for personal use only as set forth in this policy. No other medium of exchange (e.g., stamps) shall be used by prisoners to pay for goods or services.

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[4] *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir, 2006), Record 29, Exhibit 2, pp 260-272.

* * *

F. Subject to Paragraphs G, H and J, any other funds received shall be credited to the prisoner's account if in the form of a check issued by a bank with guaranteed funds (e.g., cashier check; certified check) or money order, made payable to the prisoner only. Under no circumstances shall cash be accepted.

* * *

U. Prisoners shall not be permitted to purchase or order goods or services on a credit or cash-on-deliver (i.e., C.O.D.) basis. Prisoners shall not possess accounts at financial institutions or use credit cards.

STATEMENT OF THE CASE

The Court of Appeals' decision voids Michigan's historic and traditional police powers restricting an inmate's access to funds and private bank accounts. The decision judicially engrafts a new element onto the ERISA definition of alienation to prohibit an "involuntary" change of address for receiving benefits and results in the Court granting special privileges to inmate-pensioners by allowing them to maintain a private bank account in violation of Michigan law and State court orders.

The Michigan State Correctional Facility Reimbursement Act[5] (SCFRA) requires inmates to reimburse the State for their confinement costs from their own "assets" which, by definition, includes private and public pensions.[6] To enforce reimbursement, the State Treasurer files an *in rem* action against an inmate seeking an order to recover up to 90%[7] of the asset after allocating funds for the inmate's support obligations.[8] If the asset is pension benefits, the order directs up to a 90% withdrawal of any pension amount that is deposited into the inmate's account.

In addition to securing reimbursement, the final order also enforces Michigan Department of Corrections security restrictions on inmates. These restrictions require inmates to receive all funds and conduct all financial transactions through their prison account, thereby limiting any potentially illegal or fraudulent activities outside the prison.[9] Thus, if the asset is a pension benefit, the order directs the inmate to notify the pension plan to send his benefits to the prison address where he is currently housed for an automatic deposit into his prison account. If the inmate refuses to send the address change, the prison

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[5] MCL 800.401 *et seq.* SCFRA is reproduced in the Appendix at 25a.

[6] MCL 800.401a(a).

[7] MCL 800.403(3).

[8] MCL 800.404.

[9] *Michigan Dep't of Corrections Policy Directive*, PD 04.02.105.

warden is ordered to send the pension plan notice of the inmate's legal address.

This enforcement method was pursued in State court SCFRA actions filed against the four inmates who received benefits under Respondents' Plan. In three cases, the inmates refused to comply with the orders, causing the warden to mail a notice of address change to the Plan. In the fourth case, the inmate obeyed the order and notified the Plan of his prison address.

Respondents, DaimlerChrysler and the DaimlerChrysler Corp–UAW Pension Agreement ("Plan") filed a Complaint in the United States District Court, Eastern District of Michigan, Southern Division seeking declaratory relief as to whether four State court orders, along with four court-ordered Notices of Address Change, were enforceable against the Plan[10] or whether they were preempted by ERISA.[11]

Respondents argue that ERISA's anti-alienation provision bars assignment or alienation of benefits up until the time they are paid to the pensioner,[12] and exempts the Plan from complying with the Michigan Department of Corrections security restrictions. The Plan contends that the inmate must direct where it sends the benefit payments even if the payment is sent to an address and bank account outside the prison.

Respondents also assert that the security restrictions violate ERISA's general preemption provisions prohibiting State laws from impermissibly "relating to" ERISA-protected plans.[13] They

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[10] The four Michigan State Circuit Courts actions are: *State Treasurer v Alvin Jenkins*, #440746, Wayne Circuit Court Case No. 04-409473-CZ; *State Treasurer v Harold Swanson*, #244541, Macomb Circuit Court Case No. 04-573-CZ; *State Treasurer v Gerald Cotter*, #282313, Macomb Circuit Court Case No. 04-435-CZ; and *State Treasurer v Jessy Mathews*, #318067, Wayne Circuit Court Case No. 04-422565.

[11] 29 USC 1001 *et seq.*

[12] 29 USC 1056(d)(1).

[13] 29 USC 1144(a).

contend that the security restrictions place an impermissible burden on the Plan if the Plan must follow Michigan law and State court orders as to where an inmate can receive funds rather than their alleged Plan terms that require the Plan to follow the pensioner's directions. Respondents are mistaken.

Michigan contends that requiring inmates to receive their pension benefits through their prison account does not violate ERISA's anti-alienation provision. This enforcement method does not meet the U. S. Treasury definition of "assignment" and "alienation" which include:[14]

> any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of the plan benefit payment which is, or may become, payable to the participant or beneficiary.

Under a SCFRA action, a pensioner's benefits are never transferred to a third party until after the funds are deposited into the inmate's prison account. Although the State court order affects where the Plan delivers benefits, it is the prison security restrictions that dictate where to send the funds. Once the inmate-pensioner receives his benefit, at the only place where he may legally receive funds for deposit into his only legal financial account, the benefits are no longer under Plan control.

Michigan further contends that the orders and notices do not violate the general ERISA preemption provision because they do not "relate to" (affect or burden) the Respondents' Plan. Respondents presented little argument and only several short paragraphs from their Plan as evidence to support their claim

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[14] 26 CFR 1.401(a)-13(c)(ii).

that the Plan provides the exclusive means for notification of beneficiary address changes, and that these methods do not include a mailing from the warden.

Proceedings below:

The District Court acknowledged Michigan's right to enforce its prison security restrictions against an inmate who voluntarily complies with the order and receives his pension benefits at his prison address.[15] But the Court found that an alienation of benefits occurred when the warden notifies the Plan of the inmate's address. The Court therefore voided that aspect of the State court orders and notices. The District Court further ruled that the orders and notices do not violate ERISA's general provision as they do not "relate to" or burden the Plan in any other impermissible manner.[16] The State appealed the anti-alienation portion of the decision to the Sixth Circuit Court.

The Court of Appeals correctly stated that Treasury regulations interpreting the ERISA anti-alienation provision are entitled to deference under *Chevron*.[17] The Court of Appeals also correctly acknowledged the prevailing Circuit precedent from other jurisdictions recognizing that once a pension plan has relinquished control of pension payments by sending the benefit payment to a beneficiary, attachment of those funds by a creditor does not constitute alienation.[18]

But, the Court of Appeals then proceeded to engraft an additional element onto the Treasury definition of "assignment" and "alienation" by erroneously concluding that alienation occurs

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[15] *DaimlerChrysler v Cox*, unpublished opinion/order of the United States District Court, dated May 18, 2005 (Docket No. 04-73291). Appendix at 17a.

[16] United States District Court, *DaimlerChrysler v Cox*, May 4, 2005, hearing transcript p 22 is reproduced in the Appendix at 23a.

[17] *DaimlerChrysler*, 447 F3d at 973; citing *Chevron USA, Inc v Nat'l Resources Defense Council*, 467 US 837 (1984). Appendix at 11a.

[18] *DaimlerChrysler*, 447 F3d at 976. Appendix at 16a.

when 1) a pensioner does not voluntarily agree to accept receipt of his benefit check at a particular place, regardless of the fact that he actually does receive it; and 2) because prison restrictions and SCFRA orders limit the inmate's access and control over the account funds, the funds are diverted before the inmate actually receives it.[19]

As a result, Michigan prisoners are able to use ERISA as a sword against the State's legitimate powers to control its inmate population and to restrict inmate access to funds and financial accounts outside the prison. Private pension plans are free and even encouraged to assist the inmate in violating those restrictions by sending the inmate's payment to illegal accounts. And, most importantly, the Federal Courts granted Michigan's inmate-pensioners special privileges that allow them to maintain private bank accounts in violation of Michigan law and State court orders.

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[19] *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

REASONS FOR GRANTING THE PETITION

I. The Court of Appeals held that an ERISA alienation occurs when a pension plan sends a benefit check to an address that is not voluntarily designated by the inmate-pensioner, even though the check is sent to the inmate for deposit into his only legal account. This decision erroneously re-defines the term "alienation" by engrafting a requirement that the pensioner must voluntarily designate where his benefit payment will be sent and ignores precedent by extending ERISA protection to deposited funds. The Court of Appeals decision: (1) squarely conflicts with the Michigan Supreme Court's decision on this very issue; (2) substitutes its definition of "alienation" in place of that of the U.S. Treasury Department's; and (3) is contrary to decisions of this Court and that of other federal Courts of Appeals. Review by this Court is warranted.

A. The decision below has decided an important federal question in a way that conflicts with a Michigan Supreme Court decision on the same important matter. It judicially engrafts a new requirement onto the U.S. Treasury definition of "alienation" by finding that a "transfer" of ERISA-protected benefits occurs when an inmate-pensioner does not voluntarily designate where his benefit payment will be sent.

The heart of this matter is whether a Pension Plan must comply with the Michigan Department of Corrections Directive on security restrictions that prohibit an inmate from maintaining any non-prison financial accounts, when the inmate directs the Plan to send his benefits elsewhere.

The Court of Appeals only invalidated the directive as it applies to inmate-pensioners who refuse to notify their pension plan of their prison address and bank. In these instances, both of the lower Courts voided the portion of the SCFRA order directing

wardens to make the address change notification and directed the Plan to ignore the State court orders and notices and send or deposit the funds as designated by the inmate to an illegal account. The Court of Appeals dismisses the Michigan Supreme Court's decision in *State Treasurer v Abbott*[20] as being unpersuasive. Moreover, the Court of Appeals abandons the U.S. Treasury definition of alienation.

The pertinent elements of "assignment" and "alienation" are established through the definition provided by the U.S. Department of Treasury Regulation in CFR 1.401(a)-13(c)(1)(ii)[21]:

> (c) Definition of assignment and alienation (1) In general. For purposes of this section, the terms "assignment" and "alienation" include –
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> (ii) Any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of the plan benefit payment which is, or may become, payable to the participant or beneficiary.

This definition plainly requires 1) a transfer to another (i.e., a person or entity other than the beneficiary himself); 2) of a plan payment (i.e., funds that are "*payable*" not funds that have already been paid by the plan); 3) that is enforceable against the plan. None of these elements is present in this case and nothing

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[20] *State Treasurer v Abbott*, 468 Mich 143; 660 NW2d 714 (2003); *cert den* 540 US 1112 (2004).

[21] The definition issued by the U.S. Secretary of the Department of Treasury is the proper definition of "assigned" referred to in 1056(d). *General Motors Corp v Buha*, 623 F2d 455 (6th Cir, 1980); *Guidry v Sheet Metal Workers*, 10 F3d 700, 708 (10th Cir, 1993), *reh en banc*, 39 F3d 1078 (10th Cir, 1994), *cert den* 514 US 1063 (1995).

in this definition requires the voluntary participation of the pensioner to receive the benefit at a particular place.

The SCFRA orders require the prisoner to have his pension payment sent directly to himself, at *his own* address, for deposit into *his own* account. The fact that an inmate-pensioner did not *voluntarily* direct a pension payment to *himself* does not alter the reality that the pensioner receives his benefit. Thus, there is no alienation.

The Court of Appeals acknowledged that the SCFRA orders cause inmates to receive their pension benefits for deposit into their own account.[22] And the Court concedes the State's authority to enforce address and banking restrictions on prisoners.[23] The Court's apparent concern arises from the fact that these prison security restrictions require the payments to be deposited into an account controlled by the warden.[24] But one's right to receive mail at any address and to hold funds in any financial institution is a right that prisoners have lost as a result of their felonious conduct, resulting in their conviction and incarceration.[25]

The Court of Appeals ignores the Michigan Supreme Court *Abbott* decision, and uses the realities of an inmate's inability to move freely in society to justify the use of ERISA as a sword against the State and its obligations to protect the public. The

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[22] The District Court's Amended Declaratory Judgment finds that the orders and notices relating to an inmates' obligation to notify the Plan do not create an assignment. Respondents did not appeal and the Court of Appeals ruled that this issue was not properly before it. *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

[23] *DaimlerChrysler*, 447 F3d at 967. Appendix at 16a.

[24] *DaimlerChrysler*, 447 F3d at 975. Appendix at 15a-16a.

[25] "We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them. The burden, moreover, is not on the State to prove the validity of prison regulations but on the prisoner to disprove it." (citations omitted) *Overton v Bazzetta*, 539 US 126 (2003).

Court's decision restores to inmates' rights that they forfeited when they went to prison and that are denied to the general prison population. In *Abbott*, the Michigan Supreme Court reviewed similar facts and concluded that the State court SCFRA orders and notices did not violate ERISA anti-alienation provisions. The Michigan Court based its decision on the Treasury Department's definition of "assignment" and "alienation," finding that it "plainly contemplates a transfer of the interest to another person, i.e., a person other than the beneficiary himself."[26] The Michigan Court held that an assignment does not occur when a pension plan is merely required to send the pension funds to the prisoner himself, at his current address, where the funds are then deposited directly into the prisoner's own account, because neither the warden nor a third party acquires any interest enforceable against the Plan.[27]

Although the Court of Appeals considered *Abbott*, the Court found the opinion unpersuasive and irrelevant to the question of alienation because[28]:

> (1) the prisoners did not *want* to receive the payments at their institutional addresses; (2) Michigan law strictly *controls a prisoner's bank account and how the funds may be used;* and (3) the state already effectively owned 90% of the payments even before they were received. The fact that the payments were sent to the prisoner's institutional address is therefore a mere formalism that is not dispositive of whether alienation has occurred in the present case [emphasis added].

This reasoning ignores the entire alienation analysis, especially the element requiring a "transfer to another." The

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[26] *Abbott*, 468 Mich at 150.

[27] *Abbott*, 468 Mich at 159.

[28] *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

analysis examines only the result: the State's ability to take advantage of its knowledge of where a benefit check will be deposited based upon its ability to restrict inmate access to financial accounts. This enables the State to reach a prisoner's benefit proceeds, after deposit, in a way that other support creditors cannot, with respect to the non-incarcerated debtor.

But, the "wants" of the prisoner, relative to the restrictions he is under while incarcerated, are not rights guaranteed by ERISA. ERISA does not mandate that all pensioners enjoy the opportunity to divert their monthly benefit to any place of their choosing. What is guaranteed by ERISA is that the benefit is ultimately delivered to the pensioner – to the extent *the pensioner* is able to receive it. The prisoner may *want* to direct his benefits elsewhere, but a pension plan cannot send a pensioner's payments to another, with or without the pensioner's permission. The Plan can only deliver the benefit to the pensioner.

The objective of ERISA's anti-alienation provision is "to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them."[29] Enforcement of the SCFRA order and notices has the attendant beneficial effect of furthering those purposes. SCFRA's purpose is to ensure that prisoners take responsibility for at least a portion of their own living expenses after the court allows for the prisoner's moral and legal support obligations.[30] The combined effect of these laws under Michigan's enforcement mechanism is that, by virtue of the restrictions placed on the inmate, pension benefits are sent to the inmate and deposited into his own account. The deposited funds, having lost ERISA protection, are now available to pay for the inmate's support while he is in prison. Once he is released from prison and regains the legal ability to maintain bank accounts, the

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[29] *Guidry v Sheet Metal Workers Nat'l Pension Fund*, 493 US 365, 376 (1990).

[30] MCL 800.404(5); *State Treasurer v Schuster*, 456 Mich 408, 413; 572 NW2d 628 (1998).

address and banking restrictions cease to apply and the pensioner's stream of income, to a place of his choosing, is restored. There is no "transfer" of the benefit in the enforcement of these Michigan prison regulations.

On the other hand, if Respondents prevail in their argument and inmates are free to usurp Michigan's laws by directing their Plan to send their benefits to third parties or to an illegal account outside the prison, the effect will be the very "*alienation*" that Respondents argue should be prevented. ERISA will be used to assist the Plan in ordering the prisoner to violate prison restrictions. Further, when fund payments are diverted to third parties it erodes the purpose intended by ERISA protection, since that person has the ability to use the funds for his interests alone.

B. The Court of Appeals' decision conflicts with other Circuit precedent by extending ERISA anti-alienation provisions to protect benefits after an inmate-pensioner receives and deposits the benefits into his prison account.

U. S. Department of Treasury Regulations explicitly spell out the elements for an "assignment" and "alienation" to include a transfer of a "plan benefit payment which is, or may become, payable to the participant or beneficiary."[31] Any transfer of funds to the State is made from the inmate's prison account *after* the funds are paid by the Plan and deposited into the prisoner's account. Neither the Plan nor its administrators are called upon to transfer the benefits to State control for disbursement to the prisoner.

The Court of Appeals mistakenly concluded that the inmate doesn't "receive" his benefit when it arrives at the prison because he didn't "want" to receive it there and because the State "strictly controls a prisoner's bank account and how the funds may be

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[31] 26 CFR 1.401(a)-13(c)(1)(ii).

used. . . ."[32] This finding directly conflicts with the Ninth Circuit's decision in *Wright v Riveland* that permitted an automatic deduction from a prisoner's account of deposited ERISA benefits.[33]

Wright involved a Washington statute that provided for an automatic thirty-five percent deduction from a prisoner's account of funds received from an outside source. Twenty percent of that amount was applied to the cost of incarceration. The Washington statute was challenged on a number of grounds, including a claim that the ERISA anti-alienation provision bars deductions of benefits even after distribution by a pension plan. The Ninth Circuit concluded that ERISA's prohibition on "alienation" and "assignment" applies: 1) only to arrangements that generate a right enforceable against the plan; and 2) only to benefits while they are under the control of pension plan managers.[34] The Court would not extend ERISA protection to benefits after receipt by the pensioner regardless of the controls in place over prison accounts or the automatic deduction feature that applies to the deposited funds.

The SCFRA orders in this case are similar to the controls and the automatic deduction in *Wright*. In both instances the prison account is encumbered and any deposit is subject to that encumbrance. The Court of Appeals in this case recognized that benefits, once received, are not entitled to ERISA protection.[35] The Court also recognized that Michigan could secure the inmate's ERISA benefits for reimbursement if the State located

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[32] *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

[33] *Wright v Riveland*, 219 F3d 905 (9th Cir, 2000).

[34] *Wright v Riveland*, 219 F3d at 921.

[35] *DaimlerChrysler*, 447 F3d at 974; citing *Cent. States, SE & SW Areas Pension Fund v Howell*, 227 F3d 672, 679 (6th Cir, 2000); *Robbins v DeBuono*, 218 F3d 197, 203 (2nd Cir, 2000); *Guidry v Sheet Metal Workers Nat'l Pension Fund*, 39 F3d 1078, 1082 (10th Cir, 1994)(en banc) *cert den* 514 US 1063 (1995). Appendix at 13a.

and then garnished the inmate's illegal non-prison account.[36] But, the conflict between the two decisions arises in that the Ninth Circuit allowed benefits to be deposited into an encumbered account while the Court of Appeals below found that an alienation of pension benefits occurred.

The Court of Appeals below was also mistaken because the benefit reaches the beneficiary at the only place he can physically and legally receive it, and it is deposited, by operation of Michigan's Department of Corrections Directives, into the only account that he is able to legally hold under Michigan law. Once the Plan has disbursed the benefit to the beneficiary, to the extent possible, the Plan has fulfilled its ERISA obligations.[37]

ERISA case law demonstrates that Congress had no intention of continuing ERISA protection of pension funds beyond their payout. If this Court were to decide that these benefits were exempt merely because of the controls on the prison accounts, then it would also need to determine (without any guidance from ERISA) when the protection ends, how to trace exempt benefit funds that are co-mingled with non-exempt funds, and how much control is too much control over an account to cause deposited non-protected benefits to become deposited protected benefits. To extend ERISA protections would give effect to ERISA far beyond that which would naturally follow from the ordinary meaning of the words used.[38]

The question has even more significance in the face of Michigan laws that confine and control a prison population that

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[36] *DaimlerChrysler*, 447 F3d at 976. Appendix at 16a.

[37] The District Court agreed. It held that the prisoner can be compelled to notify the Plan of his prison address and that, upon that notification; the benefit funds deposited are subject to garnishment by the warden pursuant to the SCFRA order. *DaimlerChrysler v Cox*, unpublished opinion/order of the United States District Court, dated May 18, 2005 (Docket No. 04-73219). Appendix at 17a.

[38] *Cf. In re Prestien*, 427 F Supp 1003, 1006 (SD Fla, 1977) citing *Hathorn v Robinson*, 96 Me 33 (1901).

has forfeited certain rights as a result of their incarceration. ERISA should not be construed to permit an inmate to live at the expense of taxpayers who must pay for his food, clothing, and shelter while he contemporaneously accumulates pension wealth without the restrictions placed on fellow prisoners. After release from prison, the inmate's pension proceeds will no longer be encumbered for his costs of care because he can direct the Plan to send his payments to a non-prison address or account. An inmate should not be able to accumulate his pension benefits while he literally eats on the public dole.

C. The Court of Appeals' decision judicially engrafts a new voluntary requirement onto the Treasury Department definition **of "alienation" by finding that benefits transfer to a third party when a pensioner does not voluntarily designate where he will receive his benefits.**

Respondents conceded and the District Court agreed that when the *inmate* notifies the Plan to send his benefits to his prison address for deposit into his prison account there is no assignment, even though the inmate makes that notice pursuant to the State court order. This aspect of the District Court's Judgment was not appealed and thus, the Sixth Circuit did not disturb the District Court's ruling. The result is that inmates who obeyed the SCFRA orders and sent notice to the Plan voluntarily complied, so there was no ERISA violation. But since these inmates submitted notice pursuant to State court orders, it cannot be said that their compliance was voluntary.

In fact, there is no distinction between the receipt of benefits at the prison when the notice of address change is submitted by an inmate-pensioner pursuant to court order, and receipt of benefits at the prison when the notice is made by a warden pursuant to court order. The important question is whether the inmate receives the benefits.

By asserting a distinction, the Court of Appeals engrafts a new requirement onto the definition of assignment: Delivery of a benefit *to a pensioner's account* is irrelevant if there is a reimbursement order in place over that account at the time of delivery unless the pensioner voluntarily deposited the funds into that account or voluntarily complied with a court order requiring him to have the benefit delivered to that account.[39]

Although the Treasury's definition of "assignment" and "alienation" bars both voluntary (to protect the pensioner from his own foolishness and profligacy) and involuntary assignments (from the claims of creditors and other third parties such as heirs or legatees),[40] the term "voluntary" does not apply to ministerial tasks such as where to send benefits; it applies to third party transfers. In this case the State is not a creditor[41] to whom a right or interest enforceable against the plan was transferred, so this Court need not address any broad debtor-creditor relationships.

This Court's holding will apply only in the very narrow circumstances occurring when the inmate-pensioner is required by security restrictions to have only one legal bank account. These restrictions exist and are enforceable against the inmate, for all of the funds belonging to the inmate, regardless of SCFRA.

The Court of Appeals' decision directly attacks the State's right to control its prison population. As a result of their convictions, inmates have lost the right of "voluntary" decision-making in matters concerning, among other things, their place of residence, ability to have access to funds, and choice of financial

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[39] *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

[40] *Boggs v Boggs*, 89 F3d 1169 (5th Cir, 1996).

[41] "[T]he *state* when considering pension payments according to the reimbursement act, is not a '*creditor*,' nor is the relationship between a prisoner and the state a typical debtor-creditor relationship." *State Treasurer v Schuster*, 456 Mich at 419 (emphasis added) (finding SCFRA controls over the non-alienation language of Michigan's Public School Employees Retirement Act); *State Treasurer v Gardner*, 459 Mich 1; 577 NW2d 73 (1998) (finding SCFRA takes priority over the Federal Consumer Credit Protection Act).

institution. The argument that the State must accommodate these disadvantages by restoring inmate-pensioner privileges that it revoked as a result of incarceration, or by extending the reach of ERISA protection to funds in prison accounts is not supported by ERISA language or the purpose of the statute.

Neither ERISA nor the Plan provides guidance on where an inmate or a participant may live, receive funds, or do his banking – nor should they. But the State laws do govern these things in the unique and limited situation in which the pensioner is an inmate. In order to provide security over that inmate, none of these things has been left to the inmate's choice.

The State does not voluntarily agree to provide an inmate with room and board any more than the typical inmate voluntarily seeks residence in a correctional facility. Both occur only upon conviction and order of a State court rendering a felony sentence for a term of years. It is this unique, if unwilling, relationship between a prisoner and the State that permits control over the inmate's personal account and the funds contained in it.

The fact that inmates have limited rights and abilities is a reality. It is identical to the reality that a mentally incompetent or handicapped person lacks the legal capacity to control his affairs when a State court issues a guardianship order. It is identical to the reality under State law that a person holding a power of attorney maintains the legal capacity to act as another person's attorney-in-fact. It is identical to the State law death certificate certifying the reality that a participant is deceased and benefits should now be paid to the named beneficiary. The Plan should not be permitted to attack the State laws and decisions that serve as the basis for these realities, and in fact they have no fiduciary responsibility to go behind guardianship orders, or powers of attorney, or death certificates, and the State is aware of no reported case where a Plan has attempted to do so. The laws that make an inmate incapable of conducting financial transactions at a place other than the prison should be recognized by the Plan in

the same manner that it recognizes the State laws which allow the creation of a power of attorney or guardianship order.

Scenarios limiting a pensioner's capacity to make voluntary choices about his financial affairs are unique. In the case of inmates, it is based upon their relationship to the State while they are physically incarcerated. It is this unique relationship that explains why a decision permitting the Michigan taxpayers to recover a portion of the funds they spend on an inmate's care need not have a broader effect on the vulnerability of ERISA-protected payments. Federal case law is clear that courts may not create exceptions to ERISA's prohibition on assignment and alienation. But where no alienation or assignment occurs, as in the unique circumstances here, the statutory prohibition does not apply. There is no need to carve out an exception to a statutory prohibition that does not apply.

D. The Court of Appeals erred by holding SCFRA orders and notices are preempted by ERISA's anti-alienation provision and not enforceable against the Plan.

The Court of Appeals below incorrectly concluded that the State court orders requiring the *warden* to send a notice, and the *warden notice* itself, created an assignment because the transfer arrangement was enforceable against the plan. For the reasons stated elsewhere in this Petition, since the SCFRA orders did not *transfer the inmate's benefits* to anyone but himself, there is no *transfer arrangement* enforceable against the Plan that is pre-empted by ERISA anti-alienation provisions.

For an assignment to occur, a transfer must be *enforceable against the Plan*. An order directing either a prison *warden* or the *inmate* to send notice of an inmate's address to the Plan is not a transfer, nor is it "enforceable against the plan." The Plan is not a party to the SCFRA action, the court order does not force the Plan to control the inmate's benefits on behalf of the State and a

constructive trust is never placed on the benefits while the benefits are held by the Plan. Therefore, there is no assignment.

But even though the orders and notices cannot be enforced against the Plan, they do have an impact insofar as the Plan is expected to acknowledge the address change, whether that notice is received from the prisoner or from the warden, or whether the Plan is generally aware of the restrictions on Michigan inmate's and that a particular beneficiary is incarcerated. This glancing impact – that cannot be construed as an assignment – is what is at the heart of this case. Michigan Department of Corrections' security restrictions and SCFRA orders are not preempted by ERISA's anti-alienation provision.[42]

II. This Court needs to provide guidance to the important recurring question whether Michigan laws restricting inmates to only a prison bank account impermissibly "relate to" ERISA-protected plans, or whether they impose a permissible burden and fall outside the scope of 29 USC 1144(a) preemption.

A. Where Michigan enforces its Department of Corrections' security restrictions limiting inmates to only a prison bank account through SCFRA orders requiring either the inmate or, upon inmate refusal, the warden to notify the inmate's pension plan to change the inmate-pensioner's address to the prison, the orders and notices do not "relate to" or burden Respondents' Plan.

The District Court below correctly decided that the orders and notices present no administrative burden on the Plan and were not barred under ERISA's general preemption provision.[43] Respondents did not appeal this ruling. The Court of Appeals

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[42] *DaimlerChrysler*, 447 F3d at 968-9. Appendix at 2a-3a.

[43] United States District Court, *DaimlerChrysler v Cox*, May 4, 2005, Hearing Transcript reproduced in the Appendix at 23a.

declined to address the general preemption provision after finding that the orders and notices were preempted by ERISA's anti-alienation provision.[44]

Throughout this case, Respondents' primary reason for asserting ERISA preemption focused on their alienation argument, with one minor exception. Respondents asserted, without any evidentiary support other than including certain provisions of their Plan, that the State court orders and notices burden them in the administration of their Plan, which they asserted permits only a Participant (or his designated beneficiary) to change the address where Plan benefits may be sent.

It is Michigan's position that enforcement of security restrictions on inmates, whether directed at the inmate by court order or through some means of notification to the Plan, not only does not violate ERISA's anti-alienation provisions, as demonstrated in the argument above, but also is not invalidated by ERISA's pre-emption provision because it does not conflict with any Plan address terms.

To show a conflict between Plan terms and the State court orders and notices Respondents relied on (1) Plan terms ; and (2) the Plan's ERISA-required anti-alienation provision that benefits will not "devolve upon anyone else," as evidence that address changes must be voluntary. The terms are[45]:

> An employee or former employee desiring to apply for a pension . . . must make an application in writing . . . . The applicant must furnish the information the Board of Administration shall request, including, without limiting the generality of the above . . . the names and addresses of his spouse . . . and the names and addresses of other persons, if

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[44] *DaimlerChrysler*, 447 F3d at 976. Appendix at 16a.

[45] *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir, 2006), Record 22, pp 107, 108, 119, 306.

> any, to communicate with or about him, and other pertinent facts, together with documentary evidence in support of the same . . . .
>
> * * *
>
> A pension . . . shall become payable with the employee's consent as of the first day of the month following the date on which an employee in his application for pension elects to retire or following the last day he works, whichever is later, and shall be payable in the month following the date when his application is approved . . . .
>
> * * *
>
> If Your Address changes
> You should notify Benefit Express at 1-800-409-3300 regarding any address change . . . .
>
> * * *
>
> Although it is preferred that participants not share their Passwords (PINs), confidential information will be provided and transactions performed for any caller – even callers who state that they are not the participant – who can authenticate a participant's account with name, Social Security number and Password (PIN).

Michigan contends the Plan terms are insufficient to establish a conflict. The cited terms do not specify the only acceptable methods for determining or changing a pensioner's address, or expressly require that pensioners can only make voluntary address changes. Delivery of a pensioner's benefit checks, either to a pensioner's address or account, is anticipated to change and possibly to change frequently from the pensioner's initial choice. In fact, the Plan itself recognizes that situations arise that may

require an involuntary address change, "if you . . . are unable to care for your affairs, *any payments due may be paid to the person responsible for your care* (such as a relative or a court-appointed guardian)."[46] The decisions as to where to send benefits occur well after the complex plan processes occurred and are ministerial decisions rather than core administrative matters.

Respondents' Pension Plan, like all pension plans, covers complex administrative matters. The purpose of ERISA's general preemption clause is to allow plans to operate with uniformity when coordinating complex administrative activities.[47] The general preemption section is driven by an understanding that it would be impossible for employers to administer such plans on a national level if states were able to impose their individual regulatory requirements on plan administration.[48] Permitting such interference would require a plan to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; and to comply with certain fiduciary standards in some states but not in others.[49]

This Court has described activities such as determining the eligibility of claimants, calculating benefit levels, monitoring the availability of funds for benefit payments, and maintaining appropriate records in order to comply with reporting requirements as protected administrative functions.[50]

The Respondents' Plan covers similar complex administrative matters. For example, the timing of pension payments, election requirements for commencing retirement benefits, supplemental allowances, methods for calculating when benefits become payable, and permissible deductions from the pension payment

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[46] *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir, 2006), Record 29, p 315.

[47] *Fort Halifax Packing Co v Coyne*, 482 US 1, 9 (1990).

[48] *Fort Halifax*, 482 US at 9.

[49] *Fort Halifax*, 482 US at 9.

[50] *Fort Halifax*, 482 US at 10.

amount for insurance and federal income tax withholding, etc. But the provisions quoted by Respondents' Plan, to support their preemption assertion, are not "complex protected administrative plan functions."

The Plan does not enumerate the exclusive methods for changing where benefits are sent. All of the difficult and complex determinations remain under Plan control, including preparing the check, and scheduling it for delivery. Plan recognition of the Michigan security restrictions on inmates, based upon independent knowledge that one of its participants is incarcerated, or because it has been served with a SCFRA notice by the prisoner or the warden in conjunction with a court order against the inmate enforcing these restrictions, presents no greater prospect for conflict in administering the Plan than does the processing of individual pensioner's non-SCFRA prompted address changes. The only matter affected by the orders and notices is merely the place of delivery which the Pensioner can change at any time to any place.

But, the Plan does recognizes and accept address changes from other non-pensioner sources such as a guardianship, conservatorship, power of attorney or even a State certificate of death.[51] This case presents a similar unique situation where, the warden stands in the shoes of the inmate-pensioner, for he only sends the notice on behalf of a recalcitrant prisoner who disobeys a court order.

The Michigan laws at issue in this case only affect where the Plan sends an inmate-pensioner's benefits after receiving notice that the pensioner is incarcerated. The effect is very narrow, and applies in very limited circumstances. This security restriction does not conflict with the Plan administration and this Court should be reluctant to suspend a law that comes as a result of the

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[51] *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir 2006), R29, pp 252, 304, 313, 315.

State's traditional and historic police powers.[52] "If a State creates no prospect of conflict with a federal statute, there is no warrant for disabling it from attempting to address uniquely local social and economic problems."[53]

The security restrictions are only one example of many laws that an inmate is subject to once he is confined in prison. Michigan laws do not assign or alienate the inmate's benefit and they apply only after all matters of plan administration are accomplished. At the same time, Michigan's laws have the attendant effect of guaranteeing that the benefit reaches the pensioner and is deposited in his account, forestalling any alienation. ERISA does not preempt enforcement of these laws against the plan when such enforcement has no effect upon the Plan administration.

Because the security restrictions do not conflict with or preclude Plan administration, there is no preemption.

B. This Court has determined that even in cases where the State laws "relate to" ERISA, preemption should not occur if the State law has only a tenuous, remote, or peripheral connection with the covered plans.

ERISA's preemptive scope is not all-encompassing or unlimited[54] and it does not invalidate State laws whose effect on pension plans is merely tangential.[55] The plans handle numerous transactions and Congress never meant for a fully insulated legal world[56] that excludes plans from areas of traditional state regulation unless the law impedes ERISA's purpose and

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[52] *CA Div of Labor v Dillingham Construction*, 519 US 316, 325 (1997).

[53] *Fort Halifax*, 482 US at 19.

[54] *Cf. Egelhoff v Egelhoff*, 532 US 141, 146 (2001).

[55] *Shaw v Delta Air Lines, Inc*, 463 US 85, 100 n21 (1983).

[56] *Rebaldo v Cuomo*, 749 F2d 133, 138 (2nd Cir, 1984).

objectives.[57] This Court recognizes that ERISA "preemption does not occur if the state law has only a tenuous, remote, or peripheral connection with covered plans."[58]

The key for determining whether a State law has a forbidden connection to an ERISA covered plan is to test: 1) whether the law frustrates the objectives of ERISA; and 2) the nature of the effect of the state law on ERISA plans.[59] In this case, the security restrictions: a) exercise a traditional State authority[60] to control its prison population and safeguard the public; b) they are neutral and do not affect the relations among the principal ERISA entities but merely affect the inmate in his prison status without regard for his status as a pensioner;[61] c) they do not restrict or dictate the choices of ERISA plans with regard to their benefits, structure, reporting and administration;[62] d) they do not impair the plan's ability to function simultaneously in a number of States;[63] and e) they do not force the plan to follow a choice of rules in an area of a core ERISA concern[64] because the Plan need only send the pension benefits to the inmate-pensioner at the inmate's address for deposit into the inmates only legal account.

Michigan's security restrictions and its reimbursement laws regulate areas unrelated to ERISA's purpose or objectives and their affect on the Plan is too tenuous and remote to mandate preemption. The Plan need only "recognize" that under Michigan law an inmate is restricted to receiving funds at the prison and negotiating all financial transactions through his one prison bank

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[57] *Assoc Builders v Perry*, 115 F 3d 386, 392 (6th Cir, 1997).

[58] *NY Conf Blue Cross & Blue Shield Plans v Travelers Ins*, 514 US 645, 661 (1995).

[59] *Egelhoff*, 532 US at 147 citing *CA Div of Labor v Dillingham Construction*, 519 US at 325.

[60] *Firestone v Neusser*, 810 F2d 550, 555 (6th Cir, 1987).

[61] *Firestone v Neusser*, 810 F2d at 555.

[62] *Keystone v Foley*, 37 F3d 945, 955 (3rd Cir, 1994).

[63] *Keystone v Foley*, 37 F3d at 955.

[64] *Egelhoff*, 532 US at 147.

account. Notice of the pensioner's confinement is transmitted to the Plan by either the inmate or by the warden on behalf of the inmate. The warden's notice is sent as result of a State court order that entered after the inmate was provided with notice and a hearing. During this hearing, the inmate had an opportunity to raise any defense to the SCFRA action, including the issue of re-directing his benefits to the prison. The SCFRA order in essence permits the warden to stand in the inmate's shoes when changing the pensioner's address for purposes of receiving pension payments.

This address change is no more cumbersome upon a plan administrator than a request to change a pensioner's mailing address to his vacation home during summer months and then back again. To interfere with the State's legitimate use of its police powers based upon this de minimus effect misses the entire objective and purpose of the ERISA preemption provisions. The result of preemption could produce an absurd result especially in light of the fact that enforcement of the Michigan laws has the attendant results of furthering the anti-alienation provisions of ERISA by ensuring that benefits are visited upon the pensioner, and advancing ERISA's support objectives by seeing the benefit used for the inmate-participant's actual support.

CONCLUSION AND RELIEF SOUGHT

Whether pension recipients voluntarily cause their pension payments to be sent to themselves, or are required to do so as the result of a court order enforcing Michigan laws respecting prison inmates, the result is not an "assignment" or "alienation" since the pensioner in all such instances continues to receive those payments, in full.

ERISA does not regulate whether pension benefit payments received by an inmate at his prison address may be automatically deposited into his institutional prison account as required by regulations already in place to control Michigan's prison population. A pension benefit received and deposited into an

inmate's account is the same as money derived from other sources.

Michigan's security restrictions on inmates and the mechanism for enforcing them and the SCFRA in this case - the orders and notices - are not pre-empted by ERISA because there is no impact on the Respondents' Plan. The Plan has no uniform rules or formula for determining (or restricting) the place to which payments may be mailed or deposited, except to prohibit alienation. But no alienation occurs in this case. Recognition of State laws governing an inmate-participant's address or place of deposit occur in the normal course of administration, so that a change made pursuant to Michigan's SCFRA enforcement mechanism has no (or at most a de-minimus) impact on plan administration.

There is no alienation of benefits under Michigan's SCFRA enforcement procedures. Nor does ERISA otherwise preempt the Corrections Department restrictions or SCFRA.

Therefore, this Court should reverse the Court of Appeals. The Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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Dated: August, 2006

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RECOMMENDED FOR FULL-TEXT PUBLICATION

Pursuant to Sixth Circuit Rule 206

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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DAIMLERCHRYSLER CORPORATION and
DAIMLERCHRYSLER-UAW PENSION AGREEMENT,

Plaintiffs-Appellees,

v. No. 05-1716

MIKE COX, Attorney General of the State of Michigan, and JAY B. RISING, Treasurer of the State of Michigan,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 04-73291—Bernard A. Friedman, Chief District Judge.

Argued: April 27, 2006

Decided and Filed: May 23, 2006

Before: SUHRHEINRICH, GILMAN, and ROGERS, Circuit Judges.

COUNSEL

ARGUED: Victoria A. Reardon, STATE OF MICHIGAN, DEPARTMENT OF THE ATTORNEY GENERAL, Detroit, Michigan, for Appellants. Edward C. Hammond, CLARK HILL, Birmingham, Michigan, for Appellees. **ON BRIEF:** Victoria A. Reardon, Daniel M. Levy, STATE OF MICHIGAN, DEPARTMENT OF THE ATTORNEY GENERAL, Detroit, Michigan, for Appellants. Edward C. Hammond, Florence M. Vincent, CLARK HILL, Birmingham, Michigan, Stephanie J. Clifford, CLARK HILL, Detroit, Michigan, for Appellees.

OPINION

RONALD LEE GILMAN, Circuit Judge. This is a case of first impression in this circuit, involving the question of whether Michigan's State Correctional Facility Reimbursement Act (SCFRA), in conjunction with other Michigan laws and with directives from the Michigan Department of Corrections (MDOC), runs afoul of the federal Employee Retirement Income Security Act (ERISA) in cases where prisoners refuse to inform their pension plans of a change of address. The combined effect of the Michigan laws requires wardens to notify pension plans that they should send the prisoner's benefit payments to the institutional address of that prisoner. When a pension payment is received at the prison, it is deposited into the prisoner's institutional account. SCFRA then allows the warden to garnish up to 90% of each deposit to reimburse the state of Michigan for the costs of caring for the prisoner.

In this case, the DaimlerChrysler Corporation, as the fiduciary of its pension plan, brought a declaratory action to void state-court orders and notices, issued pursuant to SCFRA, that informed DaimlerChrysler that it should send benefit

payments to the prisoners' institutional addresses. The district court invalidated the orders and notices as violations of ERISA's anti-alienation provision, but only to the extent that DaimlerChrysler is required to "send or make payments of Pension Plan benefits to any address or account other than as designated by the Participants of the Pension Plan, under Pension Plan terms." For the reasons set forth below, we **AFFIRM** the judgment of the district court.

I. BACKGROUND

A. Michigan's reimbursement laws

In Michigan, inmates are permitted to receive mail only at the correctional facility where they are incarcerated. A directive issued by the MDOC also prohibits prisoners from possessing accounts at financial institutions, so prisoners must keep all of their assets in their institutional accounts. Dept. of Corrections Policy Directive No. 04.02.105. Funds credited to a prisoner's account may be used only in accordance with this directive. *Id.*

Michigan enacted SCFRA to reimburse the state for the costs of detaining and providing for its prisoners. Under SCFRA, the attorney general may seek reimbursement for expenses incurred during a prisoner's incarceration by filing a complaint against the prisoner in the state trial court. Mich. Comp. Laws § 800.404(1). The court, after considering any legal or moral obligations of the prisoner to support any dependents, may order the prisoner to reimburse the state for the costs of incarceration in an amount up to 90% of the prisoner's assets. Mich. Comp. Laws § 800.403(3).

A prisoner's assets include his pension benefits. Mich. Comp. Laws § 800.401a(a). SCFRA also provides mechanisms for ensuring that a prisoner's assets are used to reimburse the state. Pursuant to § 800.404(3) of the Michigan Compiled Laws, the state court may order any person, corporation, or entity having custody of a prisoner's assets to

"appropriate and apply the assets or a portion thereof toward reimbursing the state." But this specific provision of SCFRA is not applicable where, as in the present case, a prisoner's assets are held by a private pension plan. Application of § 800.404(3) in those cases would violate ERISA's anti-alienation provision, which states that each plan must "provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). Instead, in order to recover a prisoner's benefits held by a private pension plan, the state utilizes SCFRA in conjunction with other Michigan laws and with MDOC's prison directives. This combination of laws and directives is at issue in the present case.

Under SCFRA, the attorney general first pursues a judgment against the prisoner and is awarded a percentage of the prisoner's pension payments. *See* Mich. Comp. Laws §§ 800.403(3), 800.404. The court then orders the prisoner to inform his or her pension plan that any benefit payments should be sent to the institutional address. If the prisoner refuses to comply, the warden of the prisoner's institution must send a copy of the order to the pension plan. The order serves to notify the pension plan of the prisoner's institutional address. Once payments are received at the prison, they are automatically deposited into the prisoner's institutional account.

B. Orders and notices at issue

In the present case, four Michigan prisoners—Gerald Cotter, Alvin Jenkins, Jessy Matthews, and Harold Swanson—are receiving benefit payments from the DaimlerChrysler Corporation-UAW Pension Agreement (Pension Plan). After Jay B. Rising, the state treasurer, filed actions against the prisoners for reimbursement pursuant to SCFRA, the prisoners were each ordered by the court to notify DaimlerChrysler that their pension benefit payments should be mailed to them at their new institutional address. Each order then stated, in slightly modified form, the following:

> If the Defendant [prisoner] shall fail or refuse to notify DaimlerChrysler Corporation of his current legal prison address, or . . . any future prison address, the warden or his representative of the correctional facility where [the prisoner] is confined shall serve a copy of this Order, along with certification of the address of the correctional facility . . . upon the DaimlerChrysler Corporation, and this shall serve as notification to DaimlerChrysler Corporation of [the prisoner's] legal address where [the prisoner] is to receive his pension benefits.

The orders then require the warden to make monthly distributions to the state of Michigan in the amount of 90% of any monies deposited into the prisoner's account.

Three of the prisoners—Jenkins, Matthews, and Swanson—did not comply with the court orders requiring them to inform DaimlerChrysler to send their benefit payments to their prison addresses. The fourth prisoner, Cotter, was the only DaimlerChrysler beneficiary who gave DaimlerChrysler this requisite notification. Mike Cox, the Michigan Attorney General, therefore sent DaimlerChrysler three notices pursuant to the respective court orders for the three noncomplying prisoners, informing DaimlerChrysler where "future benefit checks should be mailed." The "Warden's Notice of Alvin Jenkins's Legal Address Pursuant to Final Court Order of May 28, 2004," for example, reads as follows:

> Alvin Jenkins has refused to sign the certification of his legal address as required by the [attached] Court's order.
>
> Therefore, according to the Order, I am notifying you that Alvin Jenkins's legal address is:
>
> Alvin Jenkins, #440746
> Parnall Correctional Facility
> 1780 E. Parnall

Jackson, MI 48201

Please make his monthly pension benefit checks payable to Alvin Jenkins and mail them to him at his above legal address. If Alvin Jenkins moves to another prison facility, I will notify you of his new address for purposes of receiving his pension benefit checks according to the Court Order.

The three notices were signed by the warden of each prisoner's correctional institution.

DaimlerChrysler did not comply with the three notices received from the Michigan Attorney General, but instead followed the plan's terms and specifications for sending payments to the prisoners according to the mailing address each prisoner had given DaimlerChrysler in accordance with plan documents. It did, however, change Cotter's address pursuant to his direct request.

C. Proceedings below

In September of 2004, DaimlerChrysler brought a declaratory action against Attorney General Cox and State Treasurer Rising, seeking a determination that (1) state officials are precluded from enforcing the orders against the prisoners to the extent that they contravene ERISA or the Pension Plan, and (2) the orders, requests for reimbursement, and the notices issued pursuant to SCFRA are void to the extent that they compel the prisoner, or require the warden, to direct DaimlerChrysler to make payments to an account that is not voluntarily designated by the prisoner.

DaimlerChrysler argued that SCFRA is preempted by ERISA because SCFRA conflicts with several provisions in the Pension Plan. First, as mandated by ERISA, the Pension Plan provides that "[a]ny attempt to alienate, sell, transfer, assign, pledge, or otherwise encumber [benefits payable under the Pension Plan], whether presently or thereafter payable, shall be

void." Pension Plan § 14. The Pension Plan further states that benefits cannot "devolve upon anyone else." *Id.* DaimlerChrysler also pointed to language from the Pension Plan and the Summary Plan Description (SPD) regarding address changes. In particular, the SPD provides that if a participant's address changes, he "should notify Benefit Express at 1-800-409-3300 . . . ." A confidential PIN is also required to access DaimlerChrysler's Benefit Express phone system.

The state officials then filed for summary judgment, arguing that the orders and notices issued pursuant to SCFRA violate neither ERISA's anti-alienation provision nor the corresponding anti-alienation language in the Pension Plan. They further argued that SCFRA, and its methods of securing a prisoner's change of address, impose only an incidental burden on the Pension Plan and is therefore not preempted by ERISA's general preemption provision.

After a hearing in May of 2005, the district court granted DaimlerChrysler's request for declaratory relief. The court held that the orders notifying DaimlerChrysler of the change in address, and the notices themselves, are preempted by ERISA's anti-alienation provision based on an earlier district court decision in *Roberts v. Baugh*, 986 F. Supp. 1074 (E.D. Mich. 1997). Because the court found that these orders and notices did not "burden" the Pension Plan, however, the court declined to hold that they were also preempted by ERISA's *general* preemption provision.

Although DaimlerChrysler originally sought to void all of the orders, including the order requiring Cotter to inform DaimlerChrysler of his address change, it limited its position after the district court's judgment. DaimlerChrysler now claims that the orders and notices are void only to the extent that they require the warden to inform DaimlerChrysler that it should change the addresses of the three noncomplying prisoners. The district court therefore entered an amended declaratory judgment, pursuant to a stipulation by DaimlerChrysler,

holding that the orders, notices, and state treasurer's requests for reimbursement under SCFRA are preempted by ERISA, but only to the extent that DaimlerChrysler is directed to "send or make payments of Pension Plan benefits to any address or account other than as designated by the Participants of the Pension Plan, under Pension Plan terms." Any future actions by the state of Michigan for reimbursement under SCFRA were also invalidated to the extent that they directed DaimlerChrysler to send payments to an account not personally designated by a plan beneficiary in the Pension Plan. The state officials timely appealed the amended declaratory judgment that invalidated the warden's notices to Jenkins, Matthews, and Swanson.

II. ANALYSIS

A. Standard of review

This court reviews de novo the district court's decision to grant a motion for declaratory judgment. *Kelley v. E.I. DuPont de Nemours & Co.*, 17 F.3d 836, 844 (6th Cir. 1994). Whether ERISA preempts a state law is a question of law and is therefore also reviewed de novo. *Ramsey v. Formica Corp.*, 398 F.3d 421, 424 (6th Cir. 2005).

B. ERISA's preemption framework

ERISA, 29 U.S.C. §§ 1001-1461, is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). The statute does not require employers to provide any particular benefits to their employees, but sets forth uniform, federal standards that control their administration. *Id.* at 91. The Supreme Court has frequently reviewed cases involving ERISA's preemption of state laws due to the "comprehensive nature" of ERISA, "the centrality of pension and welfare plans in the national economy, and their importance to the financial security of the

Nation's work force." *Boggs v. Boggs*, 520 U.S. 833, 839 (1997).

In the present case, DaimlerChrysler argues that SCFRA is preempted by ERISA in two distinct ways. First, ERISA contains an anti-alienation provision that requires each pension plan to "provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). The Pension Plan, pursuant to this provision, prohibits any alienation, transfer, sale, or other encumbrance of plan benefits. Pension Plan § 14. If SCFRA effectuates an assignment or alienation in violation of 29 U.S.C. § 1056(d)(1), then ERISA preempts its application. *See Branco v. UFCW-N. Cal. Employers Joint Pension Plan*, 279 F.3d 1154, 1160 (9th Cir. 2002) (holding that the language of the court order that was before it "conflicts with ERISA's anti-alienation provision and is therefore pre-empted"). The other ERISA provision relied on by DaimlerChrysler is found at 29 U.S.C. § 1144(a), which invalidates "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan."

C. The parties' prior litigation

Before reaching either of its preemption arguments, however, DaimlerChrysler contends that prior litigation between the parties in the case of *Roberts v. Baugh*, 986 F. Supp. 1074 (E.D. Mich 1997), controls the outcome here based on the doctrines of res judicata, collateral estoppel, and stare decisis. The doctrines of res judicata and collateral estoppel prevent parties from relitigating issues that they had a full and fair opportunity to litigate in another forum. *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 467 (1982) (barring a plaintiff's claims under Title VII in federal court because the state-court proceedings had provided a full and fair opportunity to litigate those claims). DaimlerChrysler argues that after the *Baugh* decision, which involved the "same parties" and the "same issues present in this case," DaimlerChrysler "should not have been forced to seek relief in this action or any other action

where the [state officials] seek to circumvent *Baugh's* holding." (Appellee's Br. at 18-19) (emphasis omitted).

We respectfully disagree. The district court in *Baugh* confronted different provisions of SCFRA that allow the state to appoint the Pension Plan as a receiver to control the prisoner's assets and ultimately transfer them to the state. 986 F. Supp. at 1075. In provisions that are inapplicable to the present case, SCFRA gives the state the power to appoint a receiver "to protect and maintain assets pending resolution of an action" under SCFRA. Mich. Comp. Laws § 800.404a(2). As a further distinction between *Baugh* and the present case, the state officials in *Baugh* sought an order directly compelling DaimlerChrysler to send a prisoner's pension benefits to his institutional account pursuant to provisions of SFCRA that the state now concedes are preempted by ERISA in cases involving private pension plans. 986 F. Supp. at 1076.

The present case, in contrast, concerns provisions of SCFRA that order the warden to notify a pension plan of a prisoner's new address. DaimlerChrysler is therefore not being directly compelled by a state-court order to change participants' addresses, but instead is being informed by the wardens that it should do so. Because *Baugh* concerned provisions of SCFRA inapplicable to the present case, the state did not—and was not required to—litigate the issues involved in the present case. We therefore hold that the doctrines of res judicata and collateral estoppel do not bar the state from opposing DaimlerChrysler's declaratory action. Although the district court in this case adopted, in large part, the reasoning of *Baugh*, it understood that it was in not bound by that decision.

DaimlerChrysler also argues that the doctrine of stare decisis required the district court to follow *Baugh*. This contention is without merit for the same reasons stated above.

D. ERISA's anti-alienation provision

DaimlerChrysler's next argument, and the one that ultimately persuaded the district court, is that the orders and notices requiring the warden to direct DaimlerChrysler to send benefit payments to a prisoner's institutional address violates ERISA's anti-alienation provision. The SCFRA scheme, DaimlerChrysler asserts, accomplishes an involuntary transfer of benefits into the hands of a state representative without the permission of the plan participant, in contravention of both ERISA's antialienation provision and DaimlerChrysler's corresponding Pension Plan terms.

ERISA's anti-alienation provision reflects a policy choice on the part of Congress "to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them." *Patterson v. Shumate*, 504 U.S. 753, 765 (1992) (citations and quotation marks omitted). To that end, the anti-alienation provision requires that every pension plan include a prohibition on assigning or alienating benefits provided under the plan. 29 U.S.C. § 1056(d)(1). The Treasury Regulations, which interpret this provision and are entitled to deference under *Chevron U.S.A., Inc. v. National Resources Defense Council*, 467 U.S. 837 (1984), define the terms "assignment" and "alienation" as including any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary. 26 C.F.R. 1.401(a)-13(c)(1).

In interpreting ERISA's anti-alienation provision and its corresponding regulations, the courts have "vigorously . . . enforced ERISA's prohibition on the assignment or alienation of pension benefits, declining to recognize any implied exceptions to the broad statutory bar." *Patterson*, 504 U.S. at 760. Federal courts have thus barred state-court decisions and

state laws that result in an assignment of a participant's right to his or her benefits. *See, e.g., id.* (holding that a bankruptcy trustee is prohibited from including a debtor's interest in his employee-benefits plan as a bankruptcy-estate asset); *Guidry v. Sheet Metal Workers Nat'l Pension Fund* (*Guidry I*), 493 U.S. 365 (1990) (holding that the imposition of a constructive trust on an embezzler's pension plan, based on the conclusion that he forfeited his right to benefits, violates ERISA's anti-alienation provision); *Gen. Motors Corp. v. Buha*, 623 F.2d 455, 460 (6th Cir. 1980) (holding that "federal cases have construed ERISA's provision against assignment or alienation as prohibiting garnishments generally").

Following these precedents, other district courts that have confronted provisions of SCFRA have held that the Act violates ERISA's anti-alienation principle. The district court in *Walters v. Cox*, 342 F. Supp. 2d 670 (E.D. Mich. 2004), for example, held that, although the *Rooker-Felman* doctrine barred the court from granting a prisoner relief, the "SCFRA provision allowing the state to redirect [the] prisoner's pension checks to [his] prison account violated ERISA's anti-alienation provision." *Id.* at 675 (citing *Baugh*, 968 F. Supp. 1074). *Walters* therefore invalidated court orders and notices similar to the ones at issue in this case. 342 F. Supp. 2d at 674. In addition, the district court in *Baugh* and the district court below invalidated the application of SCFRA to the ERISA plans before those courts.

The defendants take issue with these district court decisions. They believe that the present case is distinguishable from the classic cases of garnishment because in the present case (1) the state is not acquiring an interest in the payments until after they have been disbursed to the prisoners, and (2) the SFCRA orders and notices do not give the state officials an interest that is "enforceable against the plan." *See* 26 C.F.R. 1.401(a)-13(c)(1). These two arguments raise the same issue—namely, whether the warden's notice to the Pension Plan to redirect benefit payments to a prisoner's institutional account

encumbers the benefit payments before they have left plan control.

This circuit, along with a majority of the other circuits, has held that once benefit payments have been disbursed to a beneficiary, creditors may encumber the proceeds. *See Cent. States, S.E. & S.W. Areas Pension Fund v. Howell*, 227 F.3d 672, 679 (6th Cir. 2000). In *Central States*, this court allowed a constructive trust to be imposed upon benefit payments "once the benefits ha[d] been released to the properly designated beneficiary." *Id.* As the Second Circuit has explained, the "requirement that pension plans contain a provision against assignment or alienation of benefits does not read comfortably as a prohibition against creditors reaching pension benefits once they have left the hands of the administrator." *Robbins v. DeBuono*, 218 F.3d 197, 203 (2d Cir. 2000) (holding that the Monroe County Department of Social Services did not violate ERISA's anti-alienation provision when it included as part of the wife's income the benefit payments already received by her husband).

The legislative history of ERISA's anti-alienation provision obligates a plan to protect benefits from alienation "at least up to the point of payment." *Guidry v. Sheet Metal Workers Nat'l Pension Fund* (*Guidry II*), 39 F.3d 1078, 1082 (10th Cir. 1994) (en banc) (holding that, once paid, pension benefits in a beneficiary's bank account are subject to garnishment). Circuit precedent thus stands for the proposition that once a pension plan has sent benefit payments to a beneficiary and relinquished control of those payments, the attachment of those funds by a creditor does not constitute an alienation.

In the present case, however, the SCFRA notices operate on plan benefits *before* they are sent. This case is therefore distinguishable from *Central States* because the notices, if enforceable against the Pension Plan, divert funds of the prisoners against their wishes before they are paid to the prisoners. Although the warden cannot actually access the

money until after it has been disbursed into the prisoner's institutional account, the state officials procure a judgment entitling the state to 90% of the money—and the warden takes action to inform the Pension Plan where to place the money—while the plan still has control of the funds. This is not a case, therefore, where a plan is no longer obligated to protect pension payments from alienation because the benefits have already been disbursed at the direction of the beneficiary.

What if the warden, who had already been granted an interest through SCFRA in 90% of a prisoner's pension benefits, had informed the Pension Plan that it should deposit the money directly into the warden's account instead of the prisoner's account? If "enforceable against the plan," this would certainly be an alienation of the prisoner's benefits. Yet the present case differs only to the extent that the accounts at issue are labeled with the prisoner's name. Even in cases where the courts have required a debtor to place all of his benefits into a specified account for garnishment by a third party, the beneficiary still received the payments at his specified address and then turned them over to the creditor. In other words, the encumbrance was placed on the funds only after the point where the pension plan involved no longer had control of the funds. *See Hoult v. Hoult*, 373 F.3d 47, 49-51 (1st Cir. 2004) (holding that "the anti-alienation provision does not apply where, as here, the funds have already been disbursed to the plan beneficiary").

The state officials argue, however, that the SFCRA notices and orders do not constitute an alienation of benefits because the court orders direct the *warden* to send a notice to the Pension Plan. These notices, the officials argue, are therefore not "enforceable against the plan," as required by 26 C.F.R. 1.401(a)-13(c)(1), because they do not directly obligate DaimlerChrysler to do anything. The notices, the officials contend, instead direct the warden to notify DaimlerChrysler that it should send benefits to a prisoner's institutional address. But DaimlerChrysler's declaratory action seeks a ruling on the Pension Plan's legal obligations with regard to the SFCRA

notices. DaimlerChrysler has brought suit, as the fiduciary responsible for the administration of its Pension Plan, in order to resolve the issue of whether it must follow the SCFRA orders before the state tries to enforce them.

If we were to hold that DaimlerChrysler must comply with the SCFRA notices, we would be creating a legal obligation enforceable against the Pension Plan. The state's interest in 90% of the pension benefits would then be enforced through notices instructing the Pension Plan to send the prisoner's benefit payments to an account controlled by the warden, which would constitute an alienation of plan assets. We therefore affirm the district court's holding that the SCFRA orders and notices are void to the extent that they direct DaimlerChrysler to send benefits to an address not designated by a beneficiary. The state may still send the notices, but DaimlerChrysler is not obligated to comply with them.

We acknowledge that the Michigan Supreme Court addressed notices and orders under SCFRA that were similar to the notices and orders at issue here in *State Treasurer v. Abbott*, 660 N.W.2d 714, 719 (Mich. 2003), and that the Michigan Supreme Court reached the opposite conclusion. The Court held that because money had not been transferred from the pension plan at issue to "another person" instead of to the prisoner, no alienation had occurred. Because the prisoners had received their benefit payments at their own institutional addresses, and because these benefits were not attached until they were paid to the prisoners, the Michigan Supreme Court held that there was no alienation. *Id.*

We find the *Abbott* opinion unpersuasive. Contrary to the reasoning of the Michigan Supreme Court, the fact that the prisoners have received their benefit payments at their "own" addresses is irrelevant to the question of alienation because (1) the prisoners did not want to receive the payments at their institutional addresses, (2) Michigan law strictly controls a prisoner's bank account and how the funds may be used, and (3) the state already effectively owned 90% of the payments

even before they were received. The fact that the payments were sent to the prisoner's institutional address is therefore a mere formalism that is not dispositive of whether an alienation has occurred in the present case.

Although we hold that SCFRA as applied in this case is preempted by ERISA, we are not rendering the state incapable of seeking reimbursement using a prisoner's pension benefits. Once the benefit payments are received, even if the prisoner tries to conceal them in an illegal account, the state can take action against the prisoner by placing a constructive trust on those already-paid funds. *See Guidry II*, 39 F.3d at 1082-83. The state must, however, wait for the Pension Plan to send the benefit payments at the direction of the prisoner before the state encumbers those payments. To do otherwise would violate both the letter and the spirit of ERISA's anti-alienation provision (which, at a minimum, prohibits the attachment of a debtor's pension plan benefits while still controlled by the pension plan) and the terms of the Pension Plan forbidding the benefits from devolving upon others. We are not passing, however, on the question of whether state officials can compel prisoners to send their address changes to the Pension Plan because that issue is not before us.

E. ERISA's general preemption provision

Because we hold that SCFRA orders and notices are preempted by ERISA's anti-alienation provision, we need not address whether the orders and notices are also preempted by ERISA's general preemption provision. That question can wait for another day when it may prove dispositive in a case then before the court.

III. CONCLUSION

For all of the reasons set forth above, we **AFFIRM** the judgment of the district court.

Filed 05/18/2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAIMLERCHRYSLER CORPORATION, a Delaware corporation, and the DAIMLERCHRYSLER CORPORATION UAW PENSION AGREEMENT,

Plaintiffs,

Case No. 04-73291
Judge: Hon. Bernard A. Friedman
Magistrate Judge Pepe

vs.

MIKE COX, in his official capacity as ATTORNEY GENERAL OF THE STATE OF MICHIGAN, and JAY B. RISING, in his official capacity as TREASURER OF THE STATE OF MICHIGAN,

Defendants.
_____/

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_____/

AMENDED DECLARATORY JUDGMENT

The Court has granted plaintiffs' motion for declaratory judgment. Accordingly, IT IS ORDERED AND ADJUDGED that, for the reasons stated on the record, judgment be and is hereby granted for plaintiffs against defendants as follows:

IT IS ORDERED that the Orders, Notices and State Treasurer's requests for reimbursement under Michigan's State Correctional Facility Reimbursement Act ("SCFRA") are preempted by the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and void, but only to the extent the Orders, the Notices and SCFRA either directs DaimlerChrysler, and/or the DaimlerChrysler — UAW Pension Agreement ("Pension Plan") (or its administrator); or directs a correctional facility Warden (or his or her representative) to direct DaimlerChrysler and/or the Pension Plan (or its administrator) to send or make payments of Pension Plan benefits to any address or account other than as designated by the Participants of the Pension Plan, under Pension Plan terms.

IT IS FURTHER ORDERED that any action or order (including the Notices) which the State of Michigan may have sought, is currently seeking, or will seek in the future, for reimbursement under SCFRA is preempted by ERISA and void, but only to the extent any such order and SCFRA either directs DaimlerChrysler, and/or the Pension Plan (or its administrator); or directs a correctional facility Warden (or his or her representative) to direct DaimlerChrysler, and/or the Pension Plan (or its administrator); now or in the future, to send or make payments of Pension Plan benefits to any address or account other than as designated by the Participants of the Pension Plan under Pension Plan terms. The State is not responsible for reviewing or correcting payment situations in place at the time of execution of this judgment to ensure compliance with this order, and is not responsible for refunding any payments made to the State prior to the date of this order, or for refunding any future payments made to the State in compliance with orders already in place at the time of execution of this judgment.

IT IS FURTHER ORDERED that Defendants are precluded from attempting to enforce the Orders and Notices and future similar Orders and Notices, to the extent enforcement would run contrary to this Court's ruling as stated above.

Costs to be permitted in accordance with law.

DATED: _____

_____
HON. BERNARD A. FRIEDMAN

Filed 05/05/2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAIMLERCHRYSLER CORP., et al.,
Plaintiffs,

Civil Action No.
04-CV-73291-DT
Hon.. Bernard A. Friedman

vs.
MIKE COX, et al.,
Defendants.
_____/

JUDGMENT

The court has granted plaintiffs' motion for judgment. Accordingly,

IT IS ORDERED AND ADJUDGED that judgment be and is hereby granted for plaintiffs and against defendant. Costs to be permitted in accordance with law.

DAVID J. WEAVER
CLERK OF COURT

By: _____
Deputy Clerk

Approved: __ s/Bernard A. Friedman_____
BERNARD A. FRIEDMAN
CHIEF U.S. DISTRICT JUDGE
MAY 05 2005

I hereby certify that a copy of the foregoing document was served this date upon counsel of record electronically and/or via first-class mail.

_____/s/ Patricia Foster Hommel_____
Patricia Foster Hommel
Secretary to Chief Judge Friedman

MOTIONS

WEDNESDAY, MAY 4TH, 2005

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAIMLER CHRYSLER CORPORATION,
et. al.,

Plaintiffs,

Case Number:
-V- 04-73291
MIKE COX, et. al.

Defendants,

_____/

PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BEFORE THE HONORABLE BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
238 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
WEDNESDAY, MAY 4 2005

APPEARANCES:

For the Plaintiffs:	**Stephanie J. Clifford, Esq.** **Edward C. Hammond, Esq.**
For the Defendants:	**Victoria Reardon, Esq.** **Daniel Levy, Esq.Court**
Reporter:	Joan L. Morgan, CSR Official Court Reporter

Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted

MOTIONS
WEDNESDAY, MAY 4TH, 2005

* * *

MS. CLIFFORD: The State's argument that, you know, the prisoners can't be able to tell them where to get their mail and their banking, I mean, we don't know where these prisoners are getting there pension benefits sent. I mean, it doesn't have to be a bank account. Just because they only have one bank account and that's in prison, doesn't necessarily mean that they're sending it to another bank account. So it's not violating that issue.

Unless the Court has other questions –

THE COURT: I have no questions.

In this matter -- the State's argument is very compelling, it just doesn't -- I can't fit it into the ERISA law. As I say, Judge Zatkoff, in his analysis, though I understand the difference between the plaintiffs in that particular matter, I still can't get around it though I wish I could. My thought, you know, after I found out what I could, is why not just subpoena

MOTIONS
WEDNESDAY, MAY 4TH, 2005

the records, once -- you know, find out where it's going, and I'm not suggesting it, that you do this, but as I say I'm so kind of bent on the equitable law on the State's side and also in terms of the statute where I've seen many, many cases where the state statute conflicts with the ERISA law and, therefore, ERISA trumps. But I just kept thinking, why not just find out where it's going, and once it's transferred someplace, even into somebody's hands, even if it's into a spouse's hand, at that point it should be sought after.

Now, I'm not suggesting -- I'm only thinking out loud because that was direction I really wanted to rule, but believe I can't so, therefore, the Court will grant the Summary Judgment for -- or the DEC Action I guess for the plaintiffs.

MS. REARDON: Your Honor, are you going to issue a written opinion?

THE COURT: No, not really.

MS. REARDON: Okay, then I'd like to ask for a stay on that while we appeal this.

THE COURT: Absolutely. I think it's an important issue. And I would definitely grant a stay in this particular matter because I think it's something that has to be litigated and think that it is a real question, and I would like to see the Court of Appeals rule on it, but definitely will grant the stay.

MS. REARDON: Can you explain the thought -- you're ruling that this is an alienation?

THE COURT: Alienation.

MS. REARDON: Under -- based upon the Baugh case?

THE COURT: Yes, and I'm adopting -- really the reasoning of Judge Zatkoff. That's why I'm not going to write an opinion. If I had to write an opinion, I would write one almost identical to Judge Zatkoff in this case.

Alienation though. I don't think it's a burden.

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WEDNESDAY, MAY 4TH, 2005

MS. REARDON: Thank you.

THE COURT: Okay. I think it's an important question, and I welcome the opportunity to have the Court of Appeals decide this, and - my hope in this one is that they find that I'm wrong. Though, I never care which way they go, that's why I say, thank God we have a Court of Appeals. This particular one, my interest would be because I think equity and a lot of other things dictate that the State -- unfortunately ERISA is not an equitable -- you know, it's a total statutory law. So I hope you win in the Court of Appeals, you know, by all means.

MS. REARDON: Thank you, your Honor.

MS. CLIFFORD: Thank you, your Honor.
(Proceedings concluded, 3:00 p.m.)

MOTIONS
WEDNESDAY, MAY 4TH, 2005

CERTIFICATE

I, JOAN L. MORGAN, Official Court Reporter for the United States District Court for the Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing proceedings were had in the within entitled and number cause of the date hereinbefore set forth, and I do hereby certify that the foregoing transcript has been prepared by me or under my direction.

_____
JOAN L. MORGAN, CSR
Official Court Reporter
Detroit, Michigan 48226

Dated:_____

CHAPTER 800 PRISONS
THE STATE CORRECTIONAL FACILITY REIMBURSEMENT ACT

MCL § 800.401 (2006)

§ 800.401. Short title.

Sec. 1. This act shall be known and may be cited as "the state correctional facility reimbursement act."

MCL § 800.401a

§ 800.401a. Definitions.

Sec. 1a. As used in this act:

(a) "Assets" means property, tangible or intangible, real or personal, belonging to or due a prisoner or former prisoner including income or payments to such prisoner from social security, worker's compensation, veteran's compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, or from any other source whatsoever, but does not include any of the following:

(i) The homestead of the prisoner up to $50,000.00 in value.

(ii) Money saved by the prisoner from wages and bonuses paid the prisoner while he or she was confined to a state correctional facility.

(b) "Cost of care" means the cost to the department for providing transportation, room, board, clothing, security, medical, and other normal living expenses of prisoners, and the cost to the department for providing college-level classes or programs to prisoners, as determined by the department.

(c) "Department" means the department of corrections of this state.

(d) "Director" means the director of the department.

(e) "Prisoner" means any person who is under the jurisdiction of the department and is either confined in any state

correctional facility or is under the continuing jurisdiction of the department.

(f) "State correctional facility" means a facility or institution which houses a prisoner population under the jurisdiction of the department. State correctional facility includes a correctional camp, community correction center, state prison, and a state reformatory.

MCL § 800.401b

§ 800.401b. Assets of prisoners; form.

Sec. 1b. (1) The department shall develop a form which shall be used by the department to obtain information from all prisoners regarding assets of the prisoners.

(2) Upon being developed, the form shall be submitted to each person who is a prisoner as of the date the form is developed and to every person who thereafter is sentenced to imprisonment under the jurisdiction of the department. The form may be resubmitted to a prisoner by the department for purposes of obtaining current information regarding assets of the prisoner.

(3) Every prisoner shall complete the form or provide for completion of the form and the prisoner shall swear or affirm under oath that to the best of his or her knowledge the information provided is complete and accurate.

(4) The department shall have developed the form provided for under this section not later than 30 days after the effective date of this section.

MCL § 800.402

§ 800.402. Forwarding information to attorney general.

Sec. 2. The director shall forward to the attorney general a report on each prisoner containing a completed form under section 1b together with all other information available on the assets of the prisoner and an estimate of the total cost of care for that prisoner.

MCL § 800.403

§ 800.403. Investigation by attorney general; securing reimbursement for cost of care; limitation.

Sec. 3. (1) The attorney general shall investigate or cause to be investigated all reports furnished under section 2.

(2) If the attorney general upon completing the investigation under subsection (1) has good cause to believe that a prisoner has sufficient assets to recover not less than 10% of the estimated cost of care of the prisoner or 10% of the estimated cost of care of the prisoner for 2 years, whichever is less, the attorney general shall seek to secure reimbursement for the expense of the state of Michigan for the cost of care of that prisoner.

MCL § 800.403a

§ 800.403a. Cooperation of prisoner.

Sec. 3a. (1) A prisoner shall fully cooperate with the state by providing complete financial information for purposes under this act.

(2) The failure of a prisoner to fully cooperate as provided in subsection (1) may be considered for purposes of a parole determination under section 35 of Act No. 232 of the Public Acts of 1953, being section 791.235 of the Michigan Compiled Laws.

MCL § 800.404

§ 800.404. Exclusive jurisdiction of circuit court; complaint; order to show cause; hearing; order requiring reimbursement; amount; obligation of defendant to support dependents; neglect or refusal to comply with order; contempt; liability of assets; time limitations.

Sec. 4. (1) The circuit court shall have exclusive jurisdiction

over all proceedings under this act. The attorney general may file a complaint in the circuit court for the county from which a prisoner was sentenced, stating that the person is or has been a prisoner in a state correctional facility, that there is good cause to believe that the prisoner has assets, and praying that the assets be used to reimburse the state for the expenses incurred or to be incurred, or both, by the state for the costs of care of the person as a prisoner.

(2) Upon the filing of the complaint under subsection (1), the court shall issue an order to show cause why the prayer of the complainant should not be granted. The complaint and order shall be served upon the prisoner personally or, if the prisoner is confined in a state correctional facility, by registered mail addressed to the prisoner in care of the chief administrator of the state correctional facility where the prisoner is housed, at least 30 days before the date of hearing on the complaint and order.

(3) At the time of the hearing on the complaint and order, if it appears that the prisoner has any assets which ought to be subjected to the claim of the state under this act, the court shall issue an order requiring any person, corporation, or other legal entity possessed or having custody of those assets to appropriate and apply the assets or a portion thereof toward reimbursing the state as provided for under this act.

(4) The amount of reimbursement under this act shall not be in excess of the per capita cost of care for maintaining prisoners in the state correctional facility in which the prisoner is housed.

(5) At the hearing on the complaint and order and before entering any order on behalf of the state against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support.

(6) If the person, corporation, or other legal entity shall neglect or refuse to comply with and order under subsection (3), the court shall order the person, corporation, or other legal entity to appear before the court at such time as the court may

direct and to show cause why the person, corporation, or other legal entity should not be considered in contempt of court.

(7) If, in the opinion of the court, the assets of the prisoner are sufficient to pay the costs of the proceedings under this act, the assets shall be liable for those costs upon order of the court.

(8) The state may recover the expenses incurred or to be incurred, or both, by the state for the cost of care of the prisoner during the entire period or periods the person is a prisoner in a state correctional facility. The state may commence proceedings under this act until the prisoner has been finally discharged on the sentence and is no longer under the jurisdiction of the department.

MCL § 800.404a

§ 800.404a. Remedy, interim order, or enforcement procedure; receiver; execution against homestead prohibited.

Sec. 4a. (1) Except as provided in subsection (3), in seeking to secure reimbursement under this act, the attorney general may use any remedy, interim order, or enforcement procedure allowed by law or court rule including an ex parte restraining order to restrain the prisoner or any other person or legal entity in possession or having custody of the estate of the prisoner from disposing of certain property pending a hearing on an order to show cause why the particular property should not be applied to reimburse the state as provided for under this act.

(2) To protect and maintain assets pending resolution of an action under this act, the court, upon request, may appoint a receiver.

(3) The attorney general or a prosecuting attorney shall not enforce any judgment obtained under this act by means of execution against the homestead of the prisoner.

MCL § 800.404b

§ 800.404b. Enforcement of act; investigation or assistance of prosecuting attorney; prisoners in work camps.

Sec. 4b. (1) The attorney general of this state shall enforce the provisions of this act except that the attorney general may request the prosecuting attorney of the county in which the prisoner was sentenced or the prosecuting attorney of the county in which any asset of a prisoner is located to make an investigation or assist in legal proceedings under this act.

(2) The attorney general shall not seek reimbursement under this act for the cost of care of a prisoner in a work camp if the department is being or has been reimbursed for those costs by the prisoner pursuant to section 65c of Act No. 232 of the Public Acts of 1953, being section 791.265c of the Michigan Compiled Laws.

MCL § 800.405

§ 800.405. Information and assistance.

Sec. 5. The sentencing judge, the sheriff of the county, the chief administrator of the state correctional facility, and the department of treasury shall furnish to the attorney general or prosecuting attorney all information and assistance possible to enable the attorney general or prosecuting attorney to secure reimbursement for the state under this act.

MCL § 800.406

§ 800.406. Disposition of reimbursements; determination of amount due; statements.

Sec. 6. (1) The costs of any investigations under this act shall be paid from the reimbursements secured under this act, and the balance of the reimbursements shall be credited to the general fund of the state to be available for general fund purposes.

(2) The department of treasury may determine the amount due the state in cases under this act and render statements thereof, and such sworn statement shall be considered prima facie evidence of the amount due.

MCL § 800.407

§ 800.407 (Repealed)